. . No. 4941 HOUSE

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 28, 2010.

The committee on Ways and Means to whom was referred the Senate Bill relative to flea market vendors (Senate, No. 2282), reports recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4941.

For the committee,

CHARLES A. MURPHY

Text of an amendment recommended by the committee on Ways and Means to the Senate Bill relative to flea market vendors (Senate, No. 2282). July 28 2010.

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In the Year Two Thousand and Ten

By striking out all after the enacting clause and inserting in place thereof the following:

- "SECTION 1. Section 1 of chapter 62C of the General Laws, as appearing in the 2008
- 2 Official Edition, is hereby amended by striking out the definition of 'Promoter' and inserting in
- 3 place thereof the following definition:-
- 4 'Promoter', a person who, either directly or indirectly, rents, leases or grants a license to use
- 5 space to a person for the display for sale or for the sale of tangible personal property subject to
- 6 tax under chapter 64H.
- 7 SECTION 2. The definition of 'Show' in said section 1 of said chapter 62C, as so appearing, is
- 8 hereby amended by inserting after the word 'market', in line 24, the following words:-, either
- 9 indoor or outdoor.
- SECTION 3. Section 1 of chapter 101 of the General Laws, as so appearing, is hereby amended
- by striking out the definitions of 'Transient vendor' and 'Temporary or transient business' and
- inserting in place thereof the following 6 definitions:-

- 13 'Promoter', a business or person who operates for the purpose of either directly or indirectly,
- renting, leasing or granting a license to use space to any vendor for the display for sale or for the
- sale of tangible personal property or services subject to tax under chapter 64H; provided,
- however, that this shall not include a state or county fair as defined in section 1 of chapter 128A;
- and provided further, that a promoter licensed under this chapter shall comply with sections 8A
- and 67A of chapter 62C or any regulations pursuant thereto as required by the commissioner of
- 19 revenue.
- 20 'Tangible personal property', personal property of any nature consisting of any produce, goods,
- 21 wares, merchandise and commodities whatsoever, brought into, produced, manufactured or being
- 22 within the commonwealth.
- 23 'Temporary or transient business', an exhibition and sale of goods, wares or merchandise which
- 24 is carried on in a tent, booth, building or other structure unless such place is open for business
- during usual business hours for a period of at least 12 consecutive months; provided, however,
- 26 this shall not include a business operating under a written agreement with a licensed promoter.
- 27 'Transient vendor', a person, either principal or agent, who engages in a temporary or transient
- business in the commonwealth selling goods, wares or merchandise, either in 1 locality or in
- 29 traveling from place to place; provided, however, this does not include a person operating under
- 30 a written agreement with a licensed promoter.
- 31 'Usual business hours', the time period during which similar businesses in the community
- 32 conduct business.
- 33 'Written operating agreement', a written agreement between a promoter, licensed under section
- 34 3A and a vendor to conduct business at any location.

- 35 SECTION 4. Said chapter 101, is hereby amended by inserting after section 3 the following
- 36 section:-
- 37 Section 3A. (a) Each business or person, before commencing business as a promoter, shall make
- a written application, under oath, for a license to the deputy director stating the names and
- residences of the owners or parties in whose interest the business is to be conducted. Upon the
- 40 payment of the fee under the fee schedule in subsection (b) the deputy director shall issue a
- 41 license granting the authority to do business as a promoter. A license shall expire 1 year from
- 42 the date thereof or on the day of its surrender or of the filing of an affidavit of its loss, if it is
- earlier surrendered or if such affidavit is earlier filed. The license shall contain a copy of the
- 44 application therefore and shall not be transferable.
- 45 (b) For the purpose of determining a single show for this chapter the conduct of an activity or
- event described in the definition of 'show' in section 1 of chapter 62C held on a single day in the
- commonwealth shall constitute a single show. The fee schedule for a license as a promoter shall
- be as follows: \$200 for 1 to 9 single shows to be held per year; \$300 for 10 to 19 single shows to
- be held per year; \$400 for 20 to 29 single shows to be held per year; \$500 for 30 to 39 single
- shows to be held per year; \$600 per show for 40 to 49 single shows to be held per year; and
- \$1,000 for over 50 single shows to be held per year.
- 52 (c) Each promoter licensed to conduct business shall maintain a copy of the written operating
- agreement with each vendor which shall include documentation regarding the identity and
- 54 location of each vendor, including social security number or tax identification number and a
- 55 general description of merchandise sold by each vendor. The promoter shall maintain such
- records for a period of not less than 12 months. The deputy director or law enforcement

- authorities may request a promoter to provide the records. A promoter licensed under this section shall comply with sections 8A and 67A of chapter 62C or any regulations pursuant thereto as required by the commissioner of revenue.
- SECTION 5. A vendor operating under an agreement with a licensed promoter, as defined in section 1 of chapter 101 of the General Laws, inserted by section 3, shall not be required to apply and pay a fee for a license authorizing the sale of goods, wares and merchandise within a municipality as required by section 5 of said chapter 101 unless, on the effective date of this act, the municipality requires a transient vendor to apply and pay a fee for such a license. For the purposes of this section, 'transient vendor' shall mean a person, either principal or agent, who engages in a temporary or transient business in the commonwealth selling goods, wares or

merchandise, either in 1 locality or in traveling from place to place.".

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